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04 UNITED STATES DISTRICT COURT
05 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

06 DARLAYNA RUFF,) CASE NO. C08-0531-MJP
07)
08 Plaintiff,)
09)
10 v.)
11) ORDER OF REMAND
MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
Defendant.)
_____)

12 The Court has reviewed the entire record, including the Administrative Record, the
13 memoranda of the parties, and the Report and Recommendation of United States Magistrate
14 Judge Mary Alice Theiler. It is therefore ORDERED:

- 15 (1) The Court adopts the Report and Recommendation (Dkt. No. 14);
16 (2) The Court has received and reviewed Defendant's objections to Magistrate
17 Judge Theiler's Report and Recommendation. (Dkt. No. 15.) Defendant
18 claims that the ALJ's residual functional capacity assessment did account for
19 Plaintiff's moderate difficulties in concentration, persistence, and pace because
20 the ALJ incorporated Dr. Fisher's language into the hypothetical posed to the
21 VE. (Id. at 2.) Defendant quotes Dr. Fisher's conclusion that Plaintiff could
22 carry out "routine simple instructions with reasonable consistency." (Id.

01 (citing Tr. 259)) Defendant fails to cite the subordinate clause that follows that
02 conclusion: “. . . if she is not inhibited by DAA (sic) effects.” (Tr. 259.) This
03 matter is therefore distinguishable from Stubbs-Danielson where the ALJ
04 posed a hypothetical based on the “only concrete restrictions” presented by the
05 physician’s report. Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1174 (9th
06 Cir.2008). The Court agrees with Magistrate Judge Theiler that the ALJ did
07 not provide an explanation for omitting Plaintiff’s concentration, persistence,
08 and pace limitations. (Dkt. No. 14 at 7-8.)

09 (3) The Court REMANDS this matter for further administrative proceedings; and

10 (4) The Clerk shall direct copies of this Order to all counsel and to Judge Theiler.

11 DATED this 20th day of April, 2009.

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13 Marsha J. Pechman
14 United States District Judge
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